SUPREME COURT OF THE UNITED STATES.

No. ~~101~~. 87.

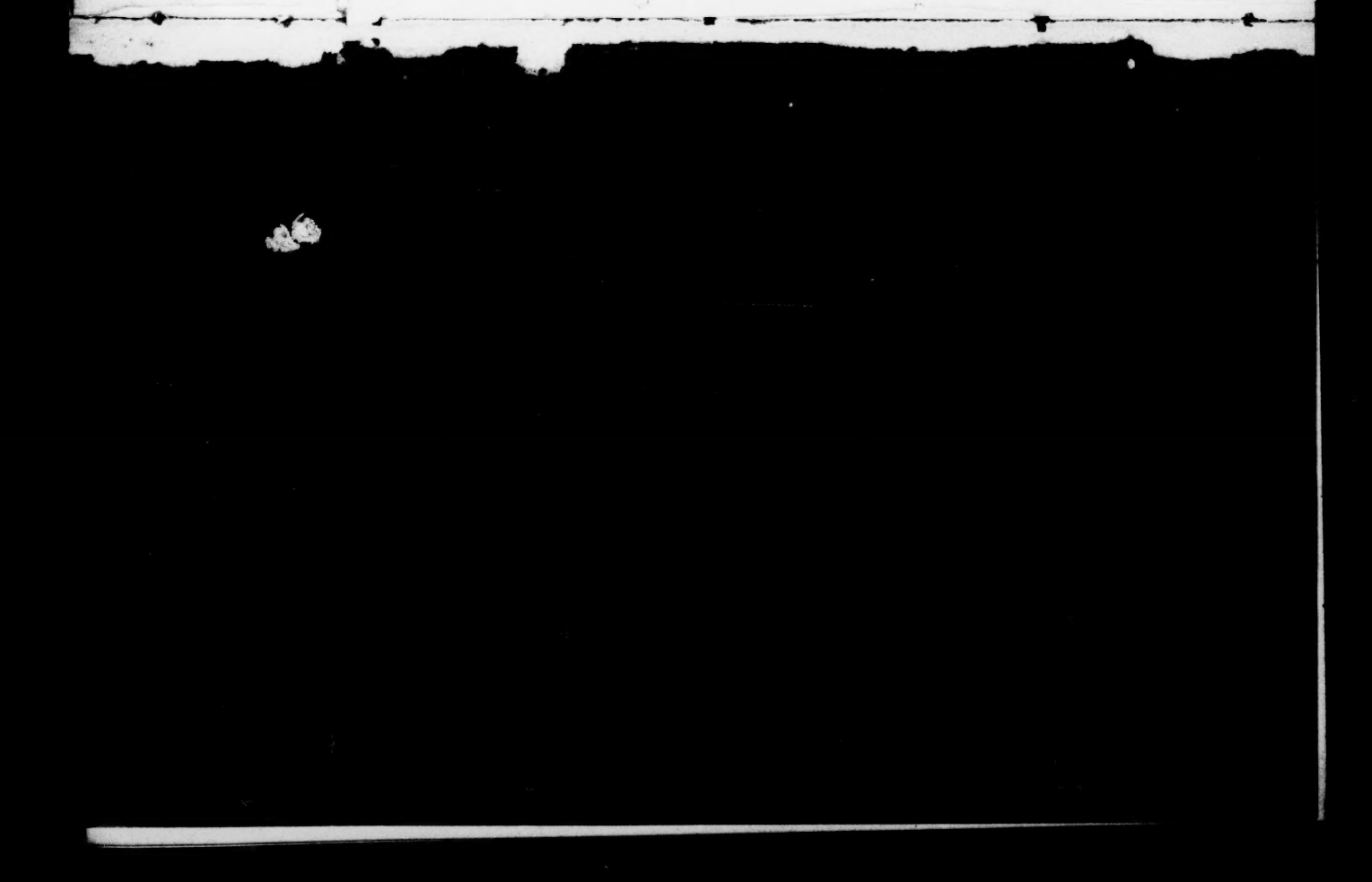
THE SHIP "ADMIRAL," W. K. COXHEAD, CLAIMANT, ON BEHALF OF FERNIE BROTHERS & CO., OWNERS OF SAID SHIP, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GOVERNMENT PRINTING OFFICE.



SUPREME COURT OF THE UNITED STATES.

No. 161.

THE SHIP "ADMIRAL," W. K. COXHEAD, CLAIMANT, ON BEHALF OF FERNIE BROTHERS & CO., OWNERS OF SAID SHIP, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 Pleas before the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of October session, 1861, No. 22.—In admiralty.

It is thus contained—

Be it remembered that heretofore, James F. Johnston, esquire, proctor and advocate for claimant, filed in court here the transcript of a record from the district court of the United States for the eastern district of Pennsylvania, in words of the tenor following, to wit:

Pleas and proceedings before the honorable John Cadwalader, judge of the district court of the United States for the eastern district of Pennsylvania.

It is thus contained—

Be it remembered that on the third day of January, A. D. 1862, George A. Coffey, esq., attorney of the United States for said district, appears in said court, and presents the libel of the United States of America against the ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden there-
2 in, which being read, is in the words following, to wit:

In the district court of the United States for the eastern district of Pennsylvania.

UNITED STATES *vs.* THE SHIP ADMIRAL, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden thereon.	In admiralty.—Prize.

This third day of January, in the year one thousand eight hundred and sixty-two, George A. Coffey, attorney for the United States for the said district, who, in this cause, prosecutes on behalf of the said United States, by all lawful ways and means, and to all effects in law, alleges and propounds articulately, as follows, viz:

1. The inhabitants and authorities of the State of Georgia, as well as of divers adjoining States, as well now as since the twelfth day of April, 1861, have and do oppose the laws of the United States, and obstruct the execution thereof, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law; and since the said date, have been and are in a state of insurrection, hostility and war against the United States; and the President of the United States issued his proclamation on the nineteenth and twenty-seventh days of April, one thousand eight hundred and sixty-one, declaring a
3 blockade of the ports of the said State of Georgia, and the said adjoining States, which block ade was then, and ever since has been, actually established and maintained.

2. That the said ship Admiral, whereof Henry H. Coxsetter is master, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden on board thereof, were on the eleventh day of December, A. D. one thousand eight hundred and sixty-one, taken

and seized about thirty-one miles off Tybee island, on the coast of the said State of Georgia, by the United States steamer Alabama, under command of Captain ; said steamer then and there being one of the Atlantic naval squadron, under command of Flag-Officer Dupont, blockading the ports and coasts of Georgia, and were brought into the port of Philadelphia, in this said district.

3. At the time of the aforesaid seizure, said ship was about thirty-one miles off Tybee island, on the coast of the said State of Georgia, and was sailing for the port of Savannah, violating or intending to violate the said blockade and the lawful regulations by which it was then established; that the said ship, and the goods, wares, and merchandize laden on board thereof, were, at the time of said seizure, the property of enemies of the United States; and the said goods, wares, and merchandize were contraband of war, and were intended for, and capable of, giving aid and comfort to the said insurgents,
4 traitors, and enemies of the United States; and the said ship, her goods, wares, and merchandize, as so doing and being, or otherwise, are liable to confiscation and condemnation, and ought to be confiscated as lawful prize.

4. Due proof being made of all the premises, proponent prays right and justice to be effectually done in the premises, and that the usual process of monition and warrant of attachment in this behalf be issued, and that the said ship, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden on board thereof, and so as aforesaid seized and taken, be pronounced to have been violating said blockade, and the lawful regulations establishing it, and to be the property of insurgents, traitors, aad enemies of the United States; to be contraband of war, and to be intended for, and capable of, giving aid and comfort to said insurgents and enemies of the United States, and as such, or otherwise, liable to confiscation and condemnation, and be condemned as lawful prize, as having been taken as aforesaid, to be disposed and distributed according to law.

GEO. A. COFFEY,
Per J. HUBLEY ASHTON,
Ass't U. S. Attorney.

And thereupon, the court having considered of the same, it is ordered and decreed that process of law do issue according to the prayer of the said libellant in said libel of complainant set forth and contained; which process, being issued, is in the words following, to wit:

5 UNITED STATES,
Eastern District of Pennsylvania, sct.:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

[SEAL.] Whereas the district court of the United States in and for the eastern district of Pennsylvania, rightly and duly proceeding on a libel, filed in the name of the United States of America,

hath decreed all persons in general who have, or pretend to have, any right, title, or interest in the ship Admiral, whereof Henry H. Coxsetter is master, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden on board, captured as prize of war by the U. S. steamer Alabama, one of the Atlantic naval squadron, to be monished, cited, and called to judgment, at the time and place underwritten, and to the effect hereafter expressed, (justice so requiring,) you are therefore charged and strictly enjoined and commanded, that you omit not, but that by publishing these presents in at least two of the daily newspapers printed and published in the city of Philadelphia, and in the Legal Intelligencer, you do monish and cite, or cause to be monished and cited, peremptorily, all persons in general who have, or pretend to have, any right, title, or interest in the said ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden on board thereof, to appear before the honorable John Cadwalader, the judge of the said court, at the district court-room in the city of Philadelphia, on the twentieth day after publication of these presents, if it be a court day, or else on the next court day following, between the usual hours of hearing causes, then and there to show, or allege, in due form of law, a reasonable and lawful excuse, if any they have, why the said ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, should not be pronounced to belong, at the time of the capture of the same, to the enemies of the United States, and, as goods of their enemies or otherwise, liable and subject to condemnation, to be adjudged and condemned as good and lawful prizes; and further to do and receive in this behalf as to justice shall appertain. And that you duly intimate, or cause to be intimated, unto all persons aforesaid, generally, (to whom by the tenor of these presents it is also intimated,) that if they shall not appear at the time and place above mentioned, or appear and shall not show a reasonable and lawful cause to the contrary, then said district court doth intend, and will proceed to adjudication on the said capture, and may pronounce that the said ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandize laden on board thereof, did belong, at the time of the capture of the same, to the enemies of the United States of America, and, as goods of their enemies or otherwise, liable and subject to confiscation and condemnation, to be adjudged and condemned as lawful prize the absence or rather contumacy of the persons so cited and intimated in anywise notwithstanding; and that you duly certify to the said district court what you shall do in the premises, together with these presents.

Witnest the honorable John Cadwalader, judge of the said court, at Philadelphia, this fourth day of January, A. D. 1862, and in the eighty-sixth year of the independence of the said United States.

CHA'S F. HEAZLITT,
Pro. Cl'k Dis't C't.

5½ I, William Millward, U. S. marshal for the E. D. of Penn'a, in obedience to the within monition, do report and say that I have executed the same, as I am commanded, by publishing the within monition in two or more of the daily newspapers published in the city of Philadelphia, viz: in the Press and Bulletin, and in the Legal Intelligencer, on the 4th day of January, 1862, and also by placing a copy of the said monition on the mast of the within-named ship Admiral.

So answers

WILLIAM MILLWARD,
U. S. Marshal,
Per THO'S B. PATTERSON,
Dep'y Marshal.

6 UNITED STATES,
Eastern District of Pennsylvania, sct.:

[SEAL.] The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

Whereas the district court of the United States in and for the eastern district of Pennsylvania, in a certain cause of prize, moved and prosecuted in the said court in the name of the United States of America, against the ship Admiral, (Henry H. Coxsetter, master,) her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, captured by the U. S. steamer Alabama, one of the Atlantic naval squadron, as prize, and brought into the port of Philadelphia, in the eastern district of Pennsylvania, rightly and duly proceeding on the day of the date hereof, upon the libel filed by the attorney of the United States for said district, hath decreed the arrest of the said ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof—

Thereupon we do hereby empower and strictly command you, that you omit not, but that you arrest, or cause to be arrested, the said ship Admiral, her tackle, apparel, and furniture, and the goods, wares, and merchandise laden on board thereof, wheresoever you shall find the same, and the same so arrested you keep under safe and secure arrest until the further order of the said district court; and that you duly certify to the said district court what you shall do in the premises, together with these presents.

Witness the honorable John Cadwalader, judge of the said district court, at Philadelphia, the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-two, and in the eighty-sixth year of the independence of the said United States.

CHA'S F. HEAZLITT,
Pro. Cl'k Dist. Ct. U. S.

7 June 4th, 1862.—By virtue of the within writ, I have arrested, seized, and attached the within-named ship Admiral, her tackle, apparel, and furniture, and the cargo laden on board, and have the same in my custody. So answers

WILLIAM MILLWARD,
U. S. Marshal,
Per THOS. B. PATTERSON,
Dep. Marshal.

8 Afterwards, to wit, on the tenth day of January, A. D. 1862, proclamation is openly made that if any one hath aught to say why the said ship Admiral, her tackle, apparel, and furniture, and the cargo laden on board, should not be condemned for the causes in the information set forth, he may appear, and he shall be heard; and no person appears.

Afterwards, to wit, on the seventeenth day of January, A. D. 1862, proclamation is again made as before; and no person thereupon appears.

Afterwards, to wit, on the twenty-fourth day of January, A. D. 1862, proclamation is again made as before; and no person thereupon appears.

Afterwards, to wit, on the thirty-first day of January, A. D. 1862, James F. Johnston, esquire, proctor and advocate for H. W. K. Coxhead, also appears in said court, and presents the claim and answer of Henry Warren Knox Coxhead, of England, on behalf of the owners of said vessel and cargo; which being read, is in the words following, to wit:

In the district court of the United States for the eastern district of Pennsylvania.

UNITED STATES
vs.
THE SHIP ADMIRAL, her cargo, &c. } Prize, &c.

The claim of Henry Warren Knox Coxhead, of England, a subject of her Majesty the Queen of Great Britain, &c., and master of
9 the ship Admiral, on behalf of Henry Fernie, James Fernie, and David Fernie, copartners under the firm of Fernie Bros. & Co., all of Liverpool, aforesaid, and subjects of the said Queen, the true, lawful, and sole owners and proprietors of the said ship Admiral, her tackle, apparel, and furniture, now detained at Philadelphia as an alleged prize of war.

And also on behalf of the firm of W. & R. Wright, of St. John's, New Brunswick, in British America, merchants, also subjects of the said Queen, the true, lawful, and sole owners and proprietors of the cargo on board of the said ship, and mentioned in the affidavit hereto annexed, for the said ship, her tackle, apparel, and furniture, as the sole property of the said Fernie Bros. & Co., and for the said cargo as the sole property of the said W. & R. Wright, of St. John's,

aforesaid, and for all such freight, losses, costs, charges, damages, demurrage, and expenses as have arisen or shall or may arise by reason of the seizure or detention aforesaid.

H. G. COXHEAD.

Sworn to and subscribed Jan'y 31, 1862.

CHA'S F. HEAZLITT,
U. S. C'r.

10 United States district court.

UNITED STATES
vs.
THE SHIP "ADMIRAL" and her cargo, &c. } Prize, &c.

Appeared personally Henry Warren Knox Coxhead, of England, and makes oath and says: I am a native of England, and a subject of her Majesty the Queen of Great Britain, and master of the said ship Admiral. Henry Fernie, James Fernie, and David Fernie are co-partners, under the firm of Fernie Brothers & Company. They are also subjects of the said Queen, and reside and carry on business in Liverpool, England, where they have for many years last past resided and carried on business as shipping agents. They are, and for many years have been, the sole and absolute owners of the said ship Admiral, her tackle, apparel, and furniture, and no other person has any ownership of or interest in her; though I believe that the bill of sale and legal title to her is in the name of one of her said owners, the said David Fernie. She was built in St. John's, New Brunswick, in or about the year 1849. She has always been and she is a British vessel. I have commanded said ship for her said owners since April or May, 1859. In the month of September, 1861, the said ship being in the port of Liverpool, England, was chartered by her said owners to Messrs. W. & R. Wright, of St. John's, New Brunswick, Nova Scotia, for the purpose only and upon the terms mentioned in two charter-parties, made and dated on the 9th day of Sep-
11 tember, A. D. 1861, and a copy of which charter-parties I annex to this my affidavit. The destination of said ship, and the whole terms and only agreement made by or between said Ferrie Brothers & Company and the said W. & R. Wright, are set forth in the said charter-parties. And the said W. & R. Wright, in pursuance of the said charter-party No. 1, shipped on board said Admiral 242 tons of coal, 376½ tons of salt, in 3,765 sacks, and 24 dozen of mats, as per bill of lading duly executed and delivered to said W. & R. Wright, and a copy of which is hereto annexed. The said coal was put on board to make up the deficiency in salt, and only to complete the ballast. Said mats were shipped as dunnage mats, to be put between the coal and the salt.

The said ship, with the said cargo, sailed from Liverpool the 12th day of September, A. D. 1861, bound for St. John's, New Brunswick, for which place she cleared; but my employers, the said Fernie Brothers & Company, gave me written instructions to proceed till I

came off Tybee, which is off the port of Savannah, and if the said port was not then blockaded, but open, that then I should proceed into said port and deliver the said salt according to the said bill of lading; but that if the blockade were not raised, of which I was instructed to make all due and proper inquiry, I should not enter, or attempt to enter, but should forthwith proceed to St. John's, New Brunswick, and there deliver the said cargo.

My instructions from the said Fernie Brothers & Company
12 were positive, that I should not, on any account, enter or attempt to break the blockade of the said port of Savannah, if it existed, but that I should first find out, if possible, whether or not a blockade existed; and if it did, then I should proceed to New Brunswick, under the said charter-party No. 2. With these instructions, and with the sole intent to carry them out in good faith, and without any intent, at any time, to break the blockade of said port of Savannah, or of any other port, I sailed from Liverpool as aforesaid.

When I was about thirty miles off Tybee island, under the British flag, and standing towards the land of the port of Savannah, and without any knowledge whether a blockade existed, or whether it had been raised, and while I was looking for a blockading vessel or some other vessel of which I might inquire whether a blockade existed, I was hailed and boarded by an officer from the United States steamer Alabama. I made to this officer and to the officer who subsequently took his place, acting as a prize-master, a full and truthful statement of the facts I have hereinbefore mentioned.

I informed the officer who first boarded me that we needed water, and he took my papers and went with them to the captain of his own ship, and on his return with them he gave them to me and said that the United States forces had captured Port Royal, and that the steamer Alabama would tow me into that port, where I could
13 get a supply of water or anything that I required. We anchored that night in the outer roads, and the next day the said steamer went into Port Royal with my ship's papers, and on the return of the said steamer he hailed me, and requested us to send a warp on board his vessel, which being done, he towed me to Port Royal, and when about three miles from the anchorage a peremptory and abrupt order was given to me from on board the said steamer Alabama to haul down my ensign, which one of the crew of the United States vessel did.

It was not till the next day, and when we were in Port Royal, that I was first informed or learned that my said ship was taken as a prize.

Those who captured the said ship then took out of her, without asking or obtaining my permission, about three tons of coal, and afterwards proceeded, with a prize crew on said ship, to Philadelphia—having first taken from her 17 hands, men and boys—and left the mate, a steward, or seaman, and myself, on said ship.

H'Y COXHEAD.

Sworn to and subscribed Jan'y 31, 1862.

CHA'S F. HEAZLITT, *U. S. Com'r.*

14 No. 3.

Mark.	No.	Goods.	F.	In.	T.	C.	Q.	Lbs.	Rate.	£	S.	D.
		Coal.....	..	..	242	..	..	....	....	..	..	...
		Salt.....	..	..	376	10	..	....	....	..	..	...
		3,765 sacks...	..	..	..	..	..	....	....	..	..	...
		24 doz. mats..	..	..	..	..	..	....	....	..	..	...

Shipped in good order and condition by Fernie Brothers & Co., of Liverpool, in and upon the good ship or vessel called the Admiral, whereof Coxhead is master for this present voyage, and now lying in the port of Liverpool, and bound for Savannah or St. John's, N. B., two hundred and forty-two tons of coal, three hundred and seventy-six and a half tons common salt, in three thousand seven hundred and sixty-five sacks, twenty-four dozen in mats, being marked and numbered as per margin, and are to be delivered in the like good order and condition at the aforesaid port of ; all and every the dangers and accidents of the seas and navigation, of whatsoever nature and kind, excepted, unto order or to assigns, he or they paying freight for the said goods, as per charter, with average accustomed.

In witness whereof, the master or purser of the said ship or vessel has affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the rest to stand void.

Dated in Liverpool, the 12th day of Sept'r, 1861.

15 *Charter-party.*

LIVERPOOL, 9 *September*, 1861.

It is this day mutually agreed between Fernie Bro's & Co., agents for owners of the ship or vessel called the Admiral, (Coxhead;) burden, per register, 800 tons or thereabouts, now at Liverpool, and Messrs. W. & K. Wright, of St. John's, N. B., charterers, that being tight, staunch, strong, and properly fitted, and the cabin-room for the crew, tackling, water, and provisions being included, said vessel shall, with all convenient speed, take on board such quantity of salt, in bags, as may be considered sufficient for good ballast, from, say, 500 to 600 tons, which full cargo the charterers engage to provide, and being so loaded, shall proceed off the port of Savannah, and if the blockade is raised, then proceed into port and deliver the salt as per B. lading; and if the blockade is not raised, then the ship to proceed to St. John's, N. B., and there deliver the same with the usual despatch of the port, restraints of ruler, accidents of rivers and sea, adverse winds, fire, pirates, and enemies, always excepted. Fifteen running days, if required, (to be computed from the day said vessel is ready, and written notice given,) shall be allowed for

discharging cargo, and ten running days additional, if required, on demurrage, at seven pounds per day, payable daily, or as required.

In consideration hereof, the charters agree to pay freight, as follows:

Thirty shillings per ton if landed at Savannah, and at St. John's, N. B., fifteen shillings, (if,) payable as follows, in cash, on de-
16 livery, at the current rate of exchange. All goods to be brought and taken from alongside at charterers' risk and expense.

The master to sign bills of lading at the current rate of freight, without prejudice to this charterer.

The owners to have an absolute lien on cargo for all freight, and dead freight, primage, and demurrage. The vessel to be addressed to freighters' agents abroad, free of commission.

Penalty for non-performance of this agreement, five hundred pounds.

(S'd) FERNIE BRO'S & CO.
(S'd) W. & R. WRIGHT.

Witness to signature of Fernie Br's & Co.:
(S'd) JA'S GILLISON.

Witness to signature of W. & R. Wright:
(S'd) JA'S GILLISON.

17 L.

Charter-party.

LIVERPOOL, 9 *September*, 1861.

It is this day mutually agreed between Fernie Br's & Co., as agents for owner of the ship or vessel called the Admiral, of Liverpool, whereof H. W. K. Coxhead is master, of 800 tons measurement or thereabouts, is now in Liverpool, and Messrs. W. & R. Wright, of St. John's, N. B., charterers, that the ship shall proceed to St. John's, N. B., with the salt and coal now on board, (which is for owners' benefit,) with liberty to call off Tybee, Savannah, for the purpose of finding if the American war is over and said port open, and if so, this charter-party to be cancelled, or so near thereto, as she may safely get to lie at all times afloat and in safety, and there load from the charterers' agent a full and complete cargo of deals, including deals for poop and house, deal ends, palings and lathwood, as master may require for broken stowage, which the charterer engages to ship, not exceeding what she can reasonably carry with her stores, provisions, and furniture; and being so loaded, shall therewith proceed to Liverpool, or so near thereto as she may safely get to lie at all times afloat and in safety, and there deliver, as per bills of lading, on being paid freight at the rate of—

	Timber.	£	*s.*	*d.*	*Per load of 50 cubic feet, Queen calliper measure.*
	Deals for house and poop	4	0	0	St. Petersburg standard hundred.
	Ends, ditto, ditto	2	13	4	ditto ditto.
	Deals and ends for broken stowage	"	"	"	" "
18	Lathwood	1	13	4	Fathom.
	Staves, pipe				Standard mille.
	Ditto, West India				Mille.

The act of God, restraint by rulers, enemies, fire, and all other dangers and accidents of the seas, rivers, and navigation, of whatever nature, during the voyage, excepted, sufficient cash for ordinary disbursements at St. John's, N. B., to be advanced to the master at current rate of exchange, free of interest and commission, but subject to insurance; the balance of freight to be paid thus: one-third in cash, on arrival at the port of discharged, and the remainder on right delivery of the cargo by approved bills on London, at four months' date.

Fifteen running days allowed to the charterer, (if the ship is not sooner despatched,) for loading her at St. John's, N. B. Fifteen like days for delivery at port of discharge, at charterers' risk and expense, and not exceeding ten like days on demurrage, at four pence per register ton per day, to be paid day by day. The lay days to commence from delivery to the charterer or charterers' agent, of a written notice from the master when he is ready to take in cargo. The ship to have a lien on the cargo for the payment of freight, dead freight, and demurrage. Penalty for non-performance of this agreement, amount of freight. No custom or usage to affect this charter. The master to call upon Messrs. W. & R. Wright, at St. John's, N. B., for this cargo.

19 Ship to be addressed to Fernie Brothers & Co., for all purposes under this charter, to whom a commission of 5 per cent. thereon is due.

(S'd) FERNIE BROS. & CO.
(S'd) W. & R. WRIGHT.

No. 2 witness to the signature of Fernie Bros. & Co.:
(S'd) A. B. FRASER.
Witness to the signature of W. & R. Wright:
(S'd) C. ASKEW.

Which said claim is allowed to be filed, subject to legal exceptions.

Afterwards, to wit, on the twenty-eighth day of February, A. D. 1862, this case came on to be heard upon the claim of H. W. K. Coxhead, master, on behalf of Henry Fernie, James Fernie, and David Fernie, trading as Fernie Brothers & Co., of Liverpool, owners of said ship, and on behalf of W. & R. Wright, owners of the cargo laden on board. And the argument of the several proctors having been duly considered, and it appearing that the said cargo so laden on board thereof is not liable to confiscation or condemnation, it is

ordered, adjudged, and decreed that the cargo so laden on board be liberated from the custody of the marshal.

20 Afterwards, to wit, on the eighth day of March, A. D. 1862, the master of said vessel appears in court, and requests that of the bills of lading for the cargo, which is in two sets—one being annexed to his claim, and the other among the preparatory proofs—one be restored to him, in order that entry may be made at the custom-house of the cargo which has been liberated by the decree of the court.

Whereupon it is ordered that the bill of lading not attached to the claim be delivered to the said master, to whom it is delivered accordingly.

To the honorable John Cadwalader, U. S. district judge:

SIR: I return herewith the papers and documents found on board and with the prize ship Admiral, marked and enumerated from No. 1 to No. 7, inclusive; and the log-book, marked "A." I also return the affidavit of the prize-master, and the depositions of the persons found on board, who were brought in for examination by the captors. All which is respectfully submitted.

HENRY FLANDERS,
Commissioner.

21 *Interrogatories.*

1. Where were you born; of what country are you now a citizen or subject; where do you reside; have you at any time, and if aye, when and where, been naturalized as a citizen of the United States; and are you in any manner interested in the captured vessel, her cargo or voyage, as owner, supercargo, agent, or otherwise howsoever?

2. Were you present, and in what capacity, at the capture in question; if aye, where and when was the capture made, and for what cause, or alleged cause; under what authority, commission, or license and flag did the captured vessel sail; was any, and what resistance made at the time of capture; and were any other, and what other ships and vessels in sight at the time of the capture?

3. Who is the master of the captured vessel; where was he born; of what country is he now a citizen or subject, and where does he generally reside; who, also, are the owners of the captured vessel; where were they born; of what country are they now citizens or subjects, and where do they generally reside?

4. What is the name of the captured vessel; what is her tonnage; where was she built; what are the numbers of her officers and crew; were there any supercargo and passengers on board; who were they, respectively; whence did they come, and whither were they going; was the vessel armed, and in what manner, and had she any contract, agreement, license, protection, passport, or sea brief on board from any government, or any officer thereof, at the time of the capture, at the time of the commencement of the voyage, or at any other and at what time during the present or any former voyage?

5. From what place did the captured vessel sail on her present voyage; to what place and places was she bound during the voyage; what cargo had she on board at the time of her sailing on the voyage, and also, at the time of her capture; at what place and time was the cargo put on board; of what place or places, respectively, was it the growth, produce, or manufacture; and out of what funds was the same purchased; and who are the laders, owners, and consignees of the cargo; where were they bound from; of what country are they now citizens or subjects, and where do they generally reside; and who would have been the true owners of the said cargo, and every part thereof, if the same had been or should be delivered at the port of destination of the said vessel?

6. What number of bills of lading, receipts, or invoices for the respective shipments of the cargo was signed by the captain; to whom, and where were the respective shipments of the cargo deliverable; was there any, and what endorsement or transfer of such bills of lading, receipts or invoices; what papers, bills of lading, receipts, invoices, letters or other writings were on board the captured vessel at the time of her departure from her last clearing port, before the capture; were any of them burnt, torn, thrown overboard, destroyed or cancelled, concealled or attempted to be concealed, and when and by whom, and who was then present; and are there in any country or place any contracts, agreements, bills of sale, charter-party, bills of lading, receipts, invoices, or other instruments and writings concerning the captured vessel, her cargo and voyage, other than those given up at the time of the capture; and if aye, where are they, of what nature are they, and what are their contents?

7. Was bulk broken during the voyage in which you were taken, or since the said ship was captured; if yea, when, where, and by whom; by whose orders, for what purpose, and in what manner?

8. Were there any passengers on board the captured vessel during any, and what part of the voyage on which she was captured; if yea, how many, and who were such passengers by name; of what nation, state, city, or district, rank, profession, or occupation was each of them; did any, and which of them, hold any, and what commission; and from whom, and for what purpose; were any, and which of such passengers, secreted at the time of the capture, and why; and what place, and when was each of them taken on board; to what place was each of them destined, or said, or supposed to be destined, and upon what business; or for what purpose or design was he destined there; did they pay, or agree to pay anything, and what, for their passage, and to whom; had any, and which of such passengers, any, and what property, or concern, or authority, directly or indirectly, regarding the ship or cargo; was there at any time during the voyage in which the said ship was captured, any officers, soldiers, or marines, secreted on board of her, and if yea, for what reason were they so secreted; and for how long had they been so secreted, and for what reason?

9. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true prop-

erty and destination of the vessel and cargo—concerning which you are now examined—at the time of the capture?

10. Did you, during the voyage on which you were captured, at, or before, or after the time of capture, or during the previous voyage in which the captured vessel reached the port of her departure on the said voyage, see any and what blockading or alleged blockading vessel or vessels; if so, state the name or names, and armament or armaments of such vessel or vessels; and where you, at any and each time or times, saw her or them, and each of them, mentioning as nearly as you can, the positions and distances of such vessel or vessels from the nearest or any other known point on shore, and if there were more than one vessel, their distances from, and relative positions to one another, and every other fact within your knowledge or belief relating to any such blockade, or alleged blockade or blockades?

11. Was any, and if any, what notice or warning given to the captured vessel, or to any, and what person or persons on board of her by, or from any blockading or alleged blockading vessel or vessels, or any officer or person on board thereof, and when, or how, was the same given or repeated; if a notice or warning had been given before the time of capture, state precisely and in detail the course of the navigation of the captured vessel from the time thereof until her capture.

22 District court of the United States within and for the eastern district of Pennsylvania.

In the matter of the prize ship Admiral.

John E. Rockwell, acting master in the navy of the United States, being first duly sworn, deposes and says: That he is the chief officer in charge of the said prize, and that the papers, letters and documents, marked and enumerated by Henry Flanders, the commissioner in the present case, from No. 1 to No. 7, inclusive, are the papers, letters, and documents delivered to him by S. F. DuPont, flag officer in command of the South Atlantic blockading squadron, as being the same which were found on board and with the said prize, and are delivered to the commissioner in the same condition they were delivered to him, without any fraud, addition, subduction, or embezzlement. And the deponent further swears, that he knows of no papers being missing, and if, at any time hereafter, before the final condemnation or acquittal of the said property, any other papers relating to the same should be found or discovered to the knowledge of this deponent, they shall also be delivered up, or information be given to the commissioner, or to the court.

JOHN E. ROCKWELL,
Acting Master, U. S. Navy.

Sworn and subscribed before me this 30th day of December, 1861.

HENRY FLANDERS,
Commissioner.

23 District court of the United States within and for the eastern district of Pennsylvania, in the matter of the prize ship Admiral.

Henry Warren Knox Coxhead, master of said ship, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows: I was born at London, England; I am a British subject; I reside at London; I am in no manner of capacity interested in the captured ship, her cargo, or voyage, otherwise than as master.

To the second interrogatory he answers, as follows: I was present at the capture in question, being master of the captured vessel. The capture was made on the 11th of the present December, at Tybee Island, light bearing northwest half west thirty-one miles. I was standing in for the port of Savannah at the time. I do not know for what cause or alleged cause the vessel was captured. The captured vessel sailed under the British flag. I made no resistance at the time of the capture. The capture was made by the U. S. man-of-war Alabama. No other ships and vessels were in sight at the time.

To the third interrogatory he answers and says: I am the master of the captured vessel; Fernie Brothers & Company, of Liverpool, England, are the owners of the captured vessel. Henry and James Fernie, and David Fernie, the son of Henry, are the only members of the firm of whom I have any knowledge. They were born in Scotland, although it is possible that David may have been born
24 in Liverpool; they all reside at or near Liverpool, and are British subjects.

To the fourth interrogatory he answers and says: The name of the captured vessel is the Admiral; her tonnage is eight hundred and eleven, B itish measure; she was built at St. John's, New Brunswick. The number of her officers and crew, all told, is nineteen. There was no supercargo, clerk, agent, merchant, or accountant on board. The vessel was not armed.

To the fifth interrogatory he answers and says: The captured vessel sailed on her present voyage from Liverpool, England; she cleared for St. John's with orders to go to Savannah, seek the blockading squadron, if any there was; ascertain whether the blockade still existed, and if so then proceed to St. John's; her cargo consisted, when she sailed on her voyage, of three hundred and sixty tons of salt, and two hundred and forty-two tons of coal. It was the same at the time of the capture; it was put on board a few days previous to our sailing on the 12th day of September last; it was the growth, produce, or manufacture of England.

I do not know out of what funds it was purchased. Two brothers, Wright, of St. John's, N. B., but having a house in Liverpool, are the laders and owners of the cargo. They are British subjects, and reside at Liverpool and St. John's. It was consigned to order.

To the sixth interrogatory he answers and says: I signed
25 four bills of lading. The *the* cargo was deliverable at Savannah, provided the port was not blockaded. All the papers and instruments of writing of every kind, which were on board at

the time of sailing from Liverpool were given up at the time of the capture, none of them having been burnt, torn, thrown overboard, destroyed, cancelled, concealed, or attempted to be concealed. Of the other matters here enquired of, I hav no knowledge.

To the seventh interrogatory he answers as follows: Bulk was not broken during the voyage; but since the capture a few sacks of coal were taken out by Commodore DuPont.

To the eighth interrogatory he answers and says: There were no passengers on board.

To the ninth interrogatory he answers and says: I have no other knowledge or belief regarding the real property and destination of the captured ship and cargo, than what I have already stated in answer to previous interrogatories.

To the tenth interrogatory he answers and says: Until the time of the capture I saw no blockading vessel or vessels, having made no voyage to any southern port since the blockade was established until the present voyage. At the time of the capture, or at the time I was boarded, there was no other blockading vessel or vessels in sight, except the Alabama, which boarded me.

To the eleventh interrogatory he answers and says: No notice or warning was given the captured vessel by any blockading vessel or vessels, or to any person on board of her.

H. W. K. COXHEAD.

Sworn and subscribed before me this 30th day of Dec., 1861.

HENRY FLANDERS,
Commissioner.

26 George Hayman, mate of the said ship, being duly sworn, deposes and says, in answer to the first interrogatory, as follows: I was born in Somerset, England; I am a British subject, and reside at Liverpool. I am not interested in any manner or capacity in the captured vessel, her cargo or voyage, except as mate.

To the second interrogatory he answers as follows: I was present at the capture in question, in my capacity of mate. It was made on the eleventh of the present month of December, in latitude north 31° 34*m*., and longitude 86° 10*m*. west. We were heading at the time west-northwest. We sailed under the English flag. No resistance was made at the time of the capture. No other ships or vessels were in sight at the time of the capture, except the vessel which captured us, to wit, the Alabama.

To the third interrogatory he answers and says: The name of the master of the captured vessel is Henry Warren Knox Coxhead. He was born, I think, in London, and, to the best of my knowledge, is now a British subject. He resides in London. The owners of the captured vessel are Messrs. Fernie Brothers; they reside, I believe, in Liverpool, and are British subjects. There are two brothers composing the firm.

To the fourth interrogatory he answers and says: The name of the captured vessel is the Admiral. Her tonnage is eight hundred and

eleven, British measure; she was built, I think, in New Brunswick. The number of her officers and crew, all told, is nineteen.
27 There was no supercargo, clerk, merchant, agent, or accountant on board. The vessel was not armed.

To the fifth interrogatory he answers as follows: The captured vessel sailed on her present voyage from Liverpool, England; she was bound to St. John's, and, so far as I had any knowledge or belief, to no other place; but the course we took lead me at first to suppose that we were going far to the southward in order to get into the trade winds; when we got of the Gulf Stream, I begun to surmise that the captain intended going into a southern port. To the best of my knowledge and belief, I judged that he was going into such a port. The cargo of the captured vessel at the time of sailing on the voyage, and at the time of the capture, consisted of salt and coal. It was put on board at Liverpool, between the 4th and twelfth of September, 1861. It was the growth, produce, or manufacture of Great Britain. I do not know out of what funds it was purchased, nor do I know who are the owners, laders, and consignees.

To the sixth interrogatory he answers and says: I have no knowledge of the matters here enquired of, except that, to the best of my knowledge and belief, Captain Coxhead gave up, at the time of the capture, all the papers, documents, and instruments of writing which we had on board at the time of sailing from Liverpool. The book marked A, by the commissioner in the present case, is the log-book kept on board and belonging to the captured vessel.

To the seventh interrogatory he answers, as follows: Bulk
28 was not broken during the voyage, nor has it been since the capture.

To the eighth interrogatory he answers as follows: There were no passengers on board the captured vessel during any part of the voyage.

To the ninth interrogatory he answers as follows: I have no other knowledge regarding the real property and destination of the captured vessel and cargo than what I have stated in answer to previous interrogatories.

To the tenth interrogatory he answers as follows: Neither during this nor the previous voyage had the captured vessel seen any blockading vessel or vessels until the time of the capture.

To the eleventh interrogatory he answers and says: No notice or warning was given to the captured vessel by any blockading vessel or vessels.

GEORGE HAYMAN.

Sworn and subscribed before me this 30th day of Dec., 1861.
HENRY FLANDERS,
Commissioner.

29 James Robert Ferguson, steward on board the said ship, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows: I was born at Belfast, England; I am

a British subject and reside at Liverpool; I am in no manner or capacity interested in the captured ship, her cargo or voyage.

To the second interrogatory he answers as follows: I was present at the capture in my question in capacity of steward on board the captured vessel. The capture was made about four o'clock in the afternoon of the 12th of the present December. I am unable to state the place where it was, but I understood that we were about thirty-one miles from land on the coast of Georgia. I do not know for what cause or alleged cause the capture was made. We sailed under the English flag. No resistance was made at the time of the capture. No other ships and vessels were in sight at the time.

To the third interrogatory he answers as follows: The master of the captured vessel is Captain Coxhead. He was born in London; he is now a British subject, and generally resides in London. Fernie Brothers, of Liverpool, England, are the owners of the captured vessel. I do not know where they were born, nor whether they are British subjects.

To the fourth interrogatory he answers and says: The name of the captured vessel is the Admiral. Her tonnage is eight hundred and eleven. She was built in St. Joun's, New Brunswick. The
30 number of her officers and crew, all told, is twenty. There was no supercargo, clerk, agent, merchant, or accountant on board. The vessel was not armed.

To the fifth interrogatory he answers as follows: The captured vessel sailed on her present voyage from Liverpool, England. She was bound to St. John's. Her cargo at the time of sailing on the voyage, and at the time of the capture, was salt and coal. It was put on board at Liverpool about the first of September, 1861; it was the growth, produce, or manufacture of Great Britain. I do not know out of what funds it was purchased. I have no knowledge of the remaining matters here enquired of.

To the sixth interrogatory he answers and says: I have no knowledge of the matters here enquired of, except that all the papers and documents on board, when we sailed from Liverpool, were given up to the officer who first boarded us.

To the seventh interrogatory he answers as follows: Bulk was not broken during the voyage, but it has been since. It was done at Port Royal, but by whose orders I am unable to say. About one or two tons of coal were taken out, and I think it was taken out for the use of the Wabash, the commodore's ship.

To the eighth interrogatory he answers as follows: There were no passengers on board during any part of the voyage.

To the ninth interrogatory he answers as follows: I can state nothing more in answer to this interrogatory than what I have already stated in answer to previous ones.

To the tenth interrogatory he answers as follows: Neither
31 during this nor the previous voyage did we see any blockading vessel or vessels, until the time of our capture.

To the eleventh interrogatory he answers as follows: No notice or

warning was given to the captured vessel by any blockading vessel or vessels.

JAMES ROBERT FERGUSON.

Sworn and subscribed before me this 31st day of Dec., 1861.

HENRY FLANDERS,
Commissioner.

William Martins, one of the hands on board, being first duly sworn, deposes and says, in answer to the first interrogatory, as follows, to wit: I was born at Yarmouth, Norfolk, England, and am now a British subject. I generally reside at Yarmouth; I am in no manner or capacity interested in the captured ship, her cargo or voyage, otherwise than as a hand on board.

To the second interrogatory he answers as follows: I was present at the capture in question, in my capacity of hand on board the captured vessel. The capture was made, I think, about the tenth of the present December, and somewhere about forty or fifty miles to the southward of Port Royal. I do not know for what cause or alleged cause the capture was made. We sailed under the English flag. No resistance was made at the time of the capture,
32 and no *and no* other ships and vessels were in sight at the time.

To the third interrogatory he answers and says: The master of the captured vessel is Captain Coxhead, but of the other matters enquired of concerning him I have no knowledge, nor have I any knowledge as to who are the owners of the captured vessel.

To the fourth interrogatory he answers as follows: The name of the captured vessel is the Admiral; her tonnage is eight hundred and twelve, British measure. The number of her officers and crew, all told, is nineteen. There were no supercargo, agent, or clerk on board, and the vessel was not armed.

To the fifth interrogatory he answers as follows: The captured vessel sailed on her present voyage from Liverpool; she was bound for St. John's, New Brunswick; her cargo at the time of sailing on the voyage and at the time of the capture, consisted of coal and salt. It was put on board at Liverpool some time in the first part of September last; it was the growth, produce, or manufacture of England; of the remaining matters here enquired of I have no knowledge.

To the sixth interrogatory he answers as follows: I have no knowledge of the matters herein enquired of.

To the seventh interrogatory he answers and says: Bulk was not broken during the voyage, except to take out coal for the ship's use, and it has been since the capture for the same purpose. A small quantity of coal was also taken out at Port Royal for the
33 use of one of the U. S. steamers there, but by whose orders I do not know.

To the eighth interrogatory he answers as follows: There were no passengers on board during any part of the voyage.

To the ninth interrogatory he answers and says: I have no other

knowledge or belief regarding the matters here inquired of than what I have already stated in answer to previous interrogatories.

To the tenth interrogatory he answers as follows: I saw no blockading vessel or vessels during the present nor previous voyage, until the time of capture.

To the eleventh interrogatory he answers as follows: No notice or warning was given by any blockading vessel or vessels.

WILLIAM MARTINS.

Sworn and subscribed before me this 31st day of December, 1861.

HENRY FLANDERS.
Commissioner.

34

No. 1.—H. F.

Number of certificates—none.
Ship—Admiral.
Master—H. W. K. Coxhead.
Date of clearance—12th Sept., 1861.

J. MINDIL,
Searcher, Collector or Comptroller.

No. 190, cocket card.

Victualling bill. Granted number, [3965.]

Pilot unknown.
Port of Liverpool.
Bonded and drawback stores in the Admiral.
Coxhead, master, for St. John's, N. B.
Men, 19 E. No. passengers or troops.
No guns. 811 tons.

Spirits, foreign:		Net quantities taken on board:
Rum	per gall.	
Brandy	" "	
Geneva	" "	
Other spirits not sweetened	"	
Spirits, British or plantation:		
Rum	" "	
Gin	" "	
Whiskey	" "	
Other spirits not sweetened	"	
Wine, for drawback	" "	
Beer, for drawback	" "	
Vinegar	" "	
Tea	per lb.	Forty-four pounds; one package.
Coffee	" "	202 lbs.; 2 p'k'ges.
Roasted, for drawback	" "	
Cocoa	per bbl.	
" paste	" "	

35

Sugar, refined	per cwt.	0 1 0	3 p'ck'ges.
" " for drawback..	" "	"	
Sugar, unrefined	" "	5 " "	
" bastard, for drawback	" "		
Molasses	" "		
Tobacco, for drawback...	per lb.		
" negro head	" "		Fifty-four pounds; two p'ck ges.
" roll	" "		
Segars	" "		
Pepper	" "		
Raisins	per cwt.	0 1 25; 1 p'k'ge.	
Currants	" "	0 0 14; 1 p'k'ge.	
Figs	" "		
Prunes	" "		
Plums	" "		
Sundries	" "		

Surplus stores cleared inward 16 tea.

J. MINDIL,
Searcher, Collector.

Examined 12 Sept., 1867.
Cleared 12 Sept.

FERNIE & CO., *Broker*,
Water St., Residence.

United Kingdom. Victualling bill.

36 No. 2.—H. F.

(R.) *Regulations for maintaining discipline, sanctioned by the Board of Trade, in pursuance of the merchants' shipping act*, 17 & 18 *Vict., c.* 104.

These regulations are distinct from, and in addition to, those contained in the act, and are sanctioned, but not universally required, by law. All or any of them may be adopted, by agreement between a master and his crew, and thereupon the offences specified in such of them as are so adopted will be legally punishable by the appropriate fines or punishments.

These regulations are all numbered, and the numbers of such of them as are adopted must be inserted in the space left for that purpose in the agreement, and a copy of these regulations must be made to correspond with the agreement, by erasing such of the regulations as are not adopted, and must then be attached to and remain with the agreement which the master of the ship takes to sea with him. If the agreement is made before a shipping master, his signature or initials must be placed opposite such of the regulations as are adopted.

For the purpose of legally enforcing any of the following penalties, the same steps must be adopted as in the case of other offences punishable under the act—that is to say, a statement of the offence must, immediately after its commission, be entered in the official log-book, by the direction of the master, and must, at the same time, be at-

tested to be true, by the signatures of the master or the mate,
37 or one of the crew; and a copy of such entry must be furnished, or the same must be read over to the offender before the ship reaches any port, or departs from the port at which she is, and an entry that the same has been so furnished or read over, and of the reply, if any, of the offender, must be made and signed in the same manner as the entry of the offence. These entries must, upon discharge of the offender, be shown to the shipping master before whom the offender is discharged; or in the case of a home-trade ship, to some shipping master at or near the place where the crew is discharged; and if he is satisfied that the offence is proved, and that the entries have been properly made, the fine must be deducted from the offender's wages and paid over to the shipping master.

If, in consequent good conduct, the master thinks fit to remit or reduce any fine upon any member of his crew, which has been entered in the log, and signifies the same to the shipping master, the fine shall be remitted or reduced accordingly. If wages are contracted for by the voyage or by share, the amount of the fines is to ascertained in the manner in which the amount of forfeiture is ascertained in similar cases, under sect. 252.

Offences.	Am't of fines or punishment..	Shipping master's signature or initials.
1. Not being on board at the time fixed by the agreement.	Two days' pay.	
38		
2. Not returning on board at the expiration of leave.	One day's pay.	
3. Insolence or contemptuous language or behavior towards the master or any mate.	One day's pay.	
4. Striking or assaulting any person on board belonging to the ship.	Two days' pay.	
5. Quarrelling, or provoking to quarrel.	One day's pay.	
6. Swearing, or using improper language.	One day's pay.	
7. Bringing or having on board spirituous liquors.	Three days' pay.	
8. Carrying a sheath knife.	One day's pay.	
9. Drunkenness. First offence	Two days' ½ allowance.	
ditto. Second offence	Two days' pay.	
10. Neglect on the part of the officer in charge of the watch to place the look-out properly.	Two days' pay.	
11. Sleeping or gross negligence while on the lookout.	Two days' pay.	
12. Not extinguishing lights at the time ordered.	One day's pay.	

13. Smoking below..... One day's pay.
14. Neglecting to bring up, open out, and air bedding when ordered. } Haf a day's pay.
15. (For the cook.) Not having any meal of the crew ready at the appointed time. } One day's pay.
16. Not attending divine service on Sunday, unless prevented by sickness or duty of the ship. } One day's pay.

39

17. Interrupting divine service by indecorous conduct. } One day's pay.
18. Not being clean shaved or washed on Sundays. } One day's pay.
19. Washing clothes on Sunday.. One day's pay.
20. Secreting contraband goods on board, with intent to smuggle. } One month's pay.
21. Destroying or defacing the copy of the agreement which is made accessible to the crew. } One day's pay.
22. If any officer is guilty of any act or default which is made subject to a fine, he shall be liable to a fine of twice the number of days' pay which would be exacted for a like act or default from a seaman, and such fine shall be paid and applied in the same manner as other fines.

All adopted. J. W. HUGHES.

40 Liverpool, (A.)—Agreement for foreign-going ships.

Copy.—Amount of fees, £2 10s. Executed in 1 folio.

Name of ship, Admiral; official number, 11701; port of registry, L'pool; port No., and date of registry, 387, 24 Nov'r, '57; registered tonnage, 811; managing owner, name, Fernie Bros. & Co.; address, (state No. of house, street, town,) No. 6, Water st., L'pool; master, name, Henry Warren Knox Coxhead; master's No. of certificate, E 70471; address, (state No. of house, street, and town,) 9 Grosveners st., Camberville, London; date and place of first signature of agreement, including name of shipping office, 7th Sep't'r, 1861, L'pool.

Scale of provisions to be allowed and served out to the crew during the voyage.

	Bread, lbs.	Beef, lbs.	Pork, lbs.	Flour, lbs.	Peas, pint.	Tea. oz.	Coffee, oz.	Sugar, oz.	Water, qts.
Sunday	1	1½	....	½	....	⅛	½	2	3
Monday	1	....	1¼	....	⅓	⅛	½	2	3
Tuesday	1	1½	....	½	....	⅛	½	2	3
Wednesday	1	....	1¼	....	⅓	⅛	½	2	3
Thursday	1	1½	....	½	....	⅛	½	2	3
Friday	1	....	1¼	....	⅓	⅛	½	2	3
Saturday	1	1½	....	½	....	⅛	½	2	3

Substitutes.

1 oz. of coffee, or cocoa, or chocolate, may be substituted for ¼ oz. of tea; molasses for sugar, the quantity to be one-half more; one lb. of potatoes for yams; ½ lb. flour or rice, ⅛ pint peas, ¼ pint barley may be substituted for each other. When fresh meat is issued, the proportion to be two lbs. per man per day in lieu of salt meat. Flour, rice, and peas, beef and pork, may be substituted for each other. The several persons whose names are hereto subscribed, and whose descriptions are contained below, and of whom 9 are engaged as sailors, hereby agree to serve on board the said ship in the several capacities expressed against their respective names, on a voyage from Liverpool to St. John's, N. B., or, if required, to any ports or places in North and South America; thence to a port for orders, and to the continent of Europe, if required, and back to a final port of discharge in the United Kingdom; the term not to exceed 12 months; and the said crew agree to conduct themselves in an orderly, faithful, and honest and sober manner, and to be at all times
41 diligent in their respective duties, and to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the said ship and the stores and cargo thereof, whether on board, in boats, or on shore, in consideration of which services, to be duly performed, the said master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. And it is hereby agreed that any embezzlement, or wilful or negligent destruction of any part of the ship's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same; and if any person enters himself as qualified for a duty which he proves incompetent to perform, his wages shall be reduced in proportion to his incompetency; and it is also agreed that the regulations authorized by the Board of Trade, which, in the paper annexed hereto, are numbered 1 to 22, are adopted by

the parties hereto, and shall be considered as embodied in this agreement; and it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require; and it is also agreed that the crew shall consist of mate, carpenter, boatswain, steward, cook, 7 seamen, 2 ordinaries, and two apprentices or boys. No grog allowed.

In witness whereof, the said parties have subscribed their
42 names hereto, on the days against their respective signatures mentioned.

Signed by Henry Warren Knox Coxhead, master, on the 7th day of September, 1861.

The authority of the owner or agent for the allotments mentioned below is in my possession.

J. W. HUGHES,
Deputy Shipping Master.

Signatures of crew.	Age.	Town or county where born.	No. of fund ticket, (if any,) or E 2.	No. of royal naval volunteers' certificates.	Ship in which he last served, official number, and port she belonged to, or other employment.	Date and place of discharge from such ship.		Date and place of joining this ship.		In what capacity engaged; and if mate, No. of his certificate, (if any.)	Time at which he is to be on board.	Am't of wages per calendar month, share, or voyage.	Am't of wages advanced on entry.	Am't of monthly allotment.	Shipping master's signature or initials.
						Date.	Place.	Date.	Place.		12 a. m.	£ s. d.	£. s. d.	£. s. d.	
George Hayman	46	Somerset			Admiral, L'pool	19 Aug.	L'pool	9 Sept.	L'pool.	Mate, C. 13,779.	10 Sept.	6 6 0	6 6 0	3 3 0	J.W. Hughes.
Daniel Manson	31	Shetland			Admiral, L'pool	19 Aug.	L'pool	7 Sept	L'pool.	B'swn	10 Sept	3 15 0	0 0 0	2 0 0	J. W. H.
James Edwards	24	Ayre			Admiral, L'pool	19 Aug.	L'pool	7 Sept	L'pool.	Carp	10 Sept	5 10 0			J. W. H.
Robert Ferguson	22	Glasgow			Admiral, L'pool	19 Aug.	L'pool	7 Sept	L'pool.	Stew'd	10 Sept	3 15 0			J. W. H.
Charles × Moore	54	L'pool			El Dorado, Hull	8 July.	Greenock	7 Sept.	L'pool.	Cook	10 Sept	3 10 0	1 15 0		J. W. H.
John Bramer	30	South			Tribune, St. John	22 Aug.	Greenock	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
John Edw'd Donald	29	N. York			Argo, Glasgow	22 Aug.	P. Glasgow	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
William Martin	23	Yarmouth	5893		Maud, St. John's	19 Aug.	L'pool	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
William Cousins	21	Barnstaple			Colonial Empire, Quebec	26 Aug.	L'pool	7 Sept	L'pool	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
Timothy × Heebe	46	Cork			Sailor Prince	17 Aug.	L'pool	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
William × Jackson	29	L'pool			Colonial Empire, Quebec	26 Aug.	L'pool	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
Daniel James	22	Liverpool			Sir Rob't Tale, London	9 June	London	7 Sept.	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
John × Nelson	23	London			Crown, Kirkwell	Oct., 60	Newry	7 Sept.	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
Barnard Swanson	21	Sweden			Maud, St. John's	19 Aug.	L'pool	7 Sept	L'pool.	Seaman	10 Sept	2 15 0	1 7 6		J. W. H.
Joseph × Fitzammons	19	Drogheda			Peacock, Drogheda	Aug	Drogheda	7 Sept.	L'pool.	Ord'y	10 Sept.	2 0 0	1 0 0		J. W. H.
William Hassard	20	Belfast			Admiral, L'pool	19 Aug.	L'pool	7 Sept.	L'pool.	Ord'y	10 Sept.	1 15 0			J. W. H.

Account of apprentices on board.

Christian and surnames of the apprentices at length.	Date of registry of indenture.	Port at which indenture was registered.	Date of registry of assignment, (if any.)	Port at which assignment (if any) was registered.
Robert Glass	2 Oct., '60	L'pool		
John Ryan	11 April, 1861	L'pool		

I declare to the truth of the entries in this agreement, delivered to the shipping master at —— on the —— day of ——, 186—.

——, *Master.*

45 No. 3.—H. F.

Foreign-going ship—Certificate for clearance outwards.

Name of master.	Name of ship.	Official number.	Port belonging to.	Registered tonnage.
Hy. W. Coxhead.	Admiral.	11701	L'pool.	811.

Port of departure.	Destination of voyage.	Payments.	£	s.	d.
Liverpool.	St. John's, N. B.	Fees....	2	10	0
		Forms ..	"	"	"
		Log	"	"	"
		Total...	"	"	"

I certify that the above-named master has engaged his crew before me, and has produced the certificates of himself and such of his mates, as are required to produce certificates, and has made the above-mentioned payments, *or has otherwise complied with the provisions of the statutes in that behalf.*

A. L. MOTT,
Shipping Master.

Dated at Liverpool, 12 day of Sept., 1861.

NOTE.—The words in italics relate to cases of running agreements, and to cases in which no fee is payable.

46 No. 4.—H. F.

Copy.

Charter-party.

LIVERPOOL, 9 *Sept.*, 1861.

It is this day mutually agreed between Fernie Bros. & Co., agents for owners of the ship or vessel called the "Admiral," Coxhead, burden, per register, 800 tons, or thereabouts, now at Liverpool, and Messrs. W. and R. Wright, of St. John's, N. B., charterers: That being tight, staunch, strong, and properly fitted, and the cabin-room for the crew, tackling, water, and provisions, being excluded, said vessel with all convenient speed take on board such quantity of salt, in bags, as may be considered sufficient for good ballast trim, say 500 or 600 tons, which full cargo the charterers engage to provide; and being so loaded, shall proceed off the port of Savannah, and if the blockade is raised, then proceed into port and deliver the salt as per b. lading, and if the blockade be not raised, then the ship to proceed to St. Johns, N. B., and there deliver the same with the usual despatch of the port, restraints of rulers, accidents of rivers and sea, adverse winds, fire, pirates, and enemies always excepted.

Fifteen running days, if required, (to be computed from the day the said vessel is ready and written notice given,) shall be allowed for discharging cargo, and ten running days additional, if required, on demurrage, at £7 pounds per day, payable daily, or as required.

In consideration hereof the charterers agree to pay freight, as follows: Thirty shillings per ton if landed at Savannah, and fif-
47 teen shillings per ton if at St. John's, N. B., payable as follows: in cash, on delivery, the current rate of exchange. All goods to be brought and taken from alongside, at charterers' risk and expense. The master to sign bills of lading, at the current rate of freight, without prejudice to this charter.

The owners to have an absolute lien on the cargo for all freight, dead freight, primage, and demurrage. The vessel to be addressed to freighters' agents abroad, free of commission.

Penalty for non-performance of the agreement, five hundred pounds.

(S'd) FERNIE, BROTHERS & CO.

Witness to signature of Fernie Bros. Co.—
(S'd) JNO. GILLISON.
Witness to signature of W. and R. Wright—
(S'd) JNO. GILLISON.

48 No. 5.—H. F.

LIVERPOOL, 12 *Sept.*, 1861.

Captain COXHEAD, *Ship Admiral:*

DEAR SIR: We hope you will have good start out of channel, and thus make a good passage out.

The enclosed charter with Messrs. W. and R. Wright will show you nature of the voyage. These gentlemen, like many others, hold the opinion that this unfortunate contest cannot last long, it being so obviously the interest of both parties to bring it to a close. This being so, and they being very wishful to have a cargo of pitch pine from Savannah to St. John, so soon as the port is again opened, for their new ship St. John River, is our great reason for their making it a condition in taking the ship, that she should go off Savannah, so that, if possible, they might have the very first shipment of timber. Of course, in calling off, you will endeavor to meet the blockading ship, (if the blockade is found to exist still,) and then get the officer in command to endorse on your register that the ship has been warned off. This will be all that is necessary for us, as owners of the ship, to justify your departure for St. John's, and there consigning the ship to Messrs. W. and B. Wright, to whom, in the mean time, we will write respecting you.

You will distinctly understand, therefore, that you run no risk, whatever, with the ship, but rather endeavor to satisfy your-
49 self as to blockade, and then find out the man-of-war, report yourself, and get the register endorsed. You will, no doubt, speak some vessels when approaching the American coast, so as to

ascertain exactly the state of matters, and be guided thereby in such way as not to infringe the blockade regulation.

Hoping, in good time, to hear from you, we are, dear sir, yours, truly,

FERNIE BRO. & CO.

50 Form No. 9.—Sailing ship.

Certificate of British registry. K. J. R. B.

Official number of ship—11701.

Date of registry, 24th November, 1857.

Port number—307.

Name of ship—Admiral.

British or foreign built—British, at St. John's, in the province of New Brunswick, in the year 1850.

Port of registry—Liverpool.

How propelled—by sails.

Number of decks—one.	Build—carvel.
Number of masts—three.	Galleries—none.
Rigged—ship.	Head—man's figure.
Stern—square.	Framework—wood.

Measurements.	Feet.	Tenths.
Length from the forepart of stern, under the bowsprit, to the aftside of the head of the stern-post	153	1
Main breadth to outside plank	33	
Depth in hold, from tonnage deck to ceiling, at midships	22	6

Name and address of builder—Francis Smith, St. John's, New Brunswick.

Tonnage.	No. of tons.
Tonnage under tonnage deck	769.82
Closed-in spaces above the tonnage deck, if any, viz:	
Space or spaces between decks	"
Poop	"
Round-house	37.66
Other enclosed places, if any, naming them, store-room	3.90
Total of register tonnage	811.38

I, the undersigned register of the port of Liverpool, hereby certify that the ship, the description of which is prefixed to this my certificate has been duly surveyed, and the above description is true; that Charles Matthews, whose certificate of competency, 8788, is
51 the master of the said ship, and that the name, residence, and description of the owner, and number of sixty-four shares held by him, are as follows:

Name, residence, and occupation of the owner—David Fernie, of Liverpool, in the county of Lancaster, shipowner.

Number of sixty-four shares—sixty-four (64.)

Dated at Liverpool, the twenty-fourth day of November, one thousand eight hundred and fifty-seven.

S. PRICE EDWARDS, *Register.*

NOTICE.—A certificate of registry granted under the merchant shipping act, 1854, is not a document of title. It does not necessarily contain notice of all changes of ownership, and in no case does it contain an official record of any mortgages affecting the ship.

Endorsed: Custom-house, Liverpool, 28th April, 1859.

I hereby certify that Henry Warren Knox Coxhead, the number of whose service is 70471, has this day been appointed master of the vessel within described in the place of Charles Matthews.

CHA'S B. MESSEROY,
Pro Register.

52 Afterwards, to wit, on the eighteenth day of March, A. D, 1862, a final decree is pronounced in the words following, to wit:

I, John Cadwalader, judge of the district court of the United States, for the eastern district of Pennsylvania, duly authorized under the Constitution and laws of the United States to hear and determine in the said district all causes and complaints as to ships, or vessels, and goods, &c., seized and taken as prize, having heard and considered the merits and circumstances of a certain cause or proceeding respecting the capture or seizure of a certain ship called the Admiral, whereof Coxhead was master, her tackle, apparel, and furniture, captured on the high seas on the eleventh day of December, 1861, by the steamer Alabama, of the navy of the United States, and brought into the port of Philadelphia, in the said district, which cause or proceeding was lately and still is depending before me, (the cargo of the said captured vessel having heretofore, by decree of the saidcourt, been liberated and restored as by the record of the said decree appears,) and the said cause, as to the said vessel, having been heard upon the libel and claim and preparatory proofs, and having been argued by the attorney of the United States and by advocate for the claimants, and it appearing that the said capture was made off the blockaded port of Savannah as the said captured ship was standing in
53 for that port, she having, with notice of the blockade thereof, sailed for that port from Liverpool, in England, bound for Savannah aforesaid, and from thence to St. John's, in New Brunswick; and if, on inquiring off Savannah aforesaid, that port should prove to be still blockaded, not to enter it, but to proceed to St. John's aforesaid, and that the said ship, on her said voyage, was cleared at and from Liverpool aforesaid, as for a voyage direct to St. John's aforesaid, and that her said primary destination for Savannah was, at her said port of departure, wholly suppressed and concealed, I, the said judge, was of opinion that, by reason of her said actual primary destination and falsification of the same, she was confiscable and liable to condemnation as lawful prize of war, and within the legal designation of property of enemies of the United States in the existing civil war, and upon the application of the attorney of the United States, praying condemnation of the said ship as prize of war, did, on the eighteenth day of March, in the year 1862, pronounce and adjudge the said ship to have belonged, at the time of the

capture aforesaid, to enemies of the United States in the said civil war, and to be as such or otherwise subject and liable to confiscation, and did condemn the same as good and lawful prize.

54 In the circuit court of the United States, E. D. of Penn'a.—Appeal in admiralty—prize.

THE UNITED STATES
vs.
THE ADMIRAL.

Grier, J.: I agree with Ch. Justice Tindal, (in Medeiros *v.* Hill, 8 Bing., 231,) "that the mere act of sailing to a port which is blockaded at the time the voyage is commenced is not an offence against the law of nations, where there is no premeditated intention of breaking the blockade." Consequently, if, in the present case, the Admiral had taken out a clearance for Savannah, with the expectation that the blockade might be removed before her arrival, with instructions to make inquiry as to its continuance at New York or Halifax, or other neutral port, and after having made such inquiry, had made no further endeavor to approach or enter the blockaded port, her seizure and condemnation as prize could not have been justified; but she presents a very different case. She was off Tybee island, sailing for the blockaded port. She had made no inquiry on the way; had no reason to believe the blockade to be raised; and when arrested in her attempt to enter, she exhibits a clearance for St. John's, New Brunswick, a port she may be said to have passed, and a letter of instructions from the owners "to call off the harbor of Savannah, to endeavor to meet the blockading ship, and get the officer in command to endorse the register," &c., but to make no attempt to run the blockade.

55 The clearance is the proper document to exhibit and disclose the intention of a ship. The clearance, in this case, may not properly come within the category of "simulated papers;" but it does not disclose the whole truth. The suppression of a most important part makes the whole false. It may be true, that in times of general peace, a clearance, exhibiting the ultimate destination of a vessel, without disclosing an alternative one, may have sometimes been used by merchants to subserve some private purpose. But in times of war, when such omissions may be used to blindfold belligerents, as to the true nature of a ship's intended voyage, and to elude a blockade, the concealment of the truth must be considered as prima facie evidence of a fraudulent intention. The Admiral, with a full knowledge that her destined port is blockaded, takes a clearance for St. John's, and is found a thousand miles from the proper course to such port, and in the act of entering a blockaded port, and when thus arrested, for the first time inquires whether the blockade has been raised.

A vessel which has full knowledge of the existence of a blockade, before she enters on her voyage, has no right to claim a warning or endorsement when taken in the act of attempting to enter. It would

be an absurd construction of the President's proclamation to require a notice to be given to those who already had knowledge. A notification is for those only who have sailed without a knowledge of the blockade, and get their first information of it from the blockading vessels. Now, the primary destination of this vessel is to a blockaded port. If the owners had reason to expect that possibly the blockade might be raised before the arrival of their vessel,
56 and thus a profit be made by their ability to take the first advantage of it, their clearance, in the exercise of good-faith, should have made admission of the true primary destination of the vessel. If the truth had appeared on the face of this document, and if the master had been instructed to inquire at some intermediate port and to proceed no further in case he found the blockade still to exist, the owners might justly claim that their conduct showed "no premeditated intention of breaking the blockade." But when arrested in the attempt to enter a port known to be blockaded, with a false clearance, it is too late to produce the bill of lading or letter of instructions to prove innocency of intention; in such cases intention can be judged only by acts. The true construction of this proceeding may be thus translated: "Enter the blockaded port, if you can, without danger; if you are arrested by a blockading vessel, inform the captor that you were not instructed to run the blockade, but had merely called for information, and would be pleased to have your register endorsed, with leave to proceed elsewhere." If so transparent a contrivance could be received as evidence of a want of any "premeditated intention to break the blockade," the important right of blockade would be but a *brutum fulmen* in the hands of a belligerent. "It would" (says Lord Stowell) "amount, in practice, to a universal license to attempt to enter, and being prevented, to claim the liberty of going elsewhere." In the cases where the stringency of the general rule, established by this judge, (but overruled in Medeiros *v.* Hill,) had been by him relaxed, as to American
57 vessels, in certain circumstances, the clearances were taken contingently, but directly for the blockaded port, in the expectation of a relaxation of the blockade, with instructions to inquire as to the fact at a British or neutral port. The clearance exhibits the whole truth, and the place of inquiry, their good faith. In these most material facts, this case differs from them.

I concur, therefore, in the decree pronounced by the district court.

54*a* Afterwards, to wit, on the twelfth day of September, A. D. 1862, a final decree is pronounced in the words following, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, upon the appeal of W. K. Coxhead, claimant, on behalf of Fernie Brothers & Co., owners of the said ship "Admiral," from a decree of the district court of the United States for the said district.

The said ship having been captured on the high seas by the United States man-of-war Alabama, and brought into the said district for

adjudication, and certain proceedings in the said district court having been instituted, at the suit of the United States, for the condemnation of the said vessel as prize of war, and the said appellants having intervened therein as claimants of the said vessel, praying restitution of the same; and it appearing that the said capture was made off the blockaded port of Savannah, as the said captured ship was standing in for that port, she having, with notice of the blockade thereof, sailed for that port from Liverpool, in England, bound for Savannah, aforesaid, and if, on inquiry off Savannah, aforesaid, that port should prove to be still blockaded, not to enter it, but proceed to St. John's, New Brunswick, and that the said ship, on her said voyage, was cleared at and from Liverpool aforesaid, as for a voyage direct to St. John's aforesaid, and that her said primary destination for Savannah was, at her said port of departure, wholly suppressed and concealed; the said vessel was condemned by the said district court as lawful prize of war. And the said claimants prosecuted their said appeal to this court, which appeal having been duly al-
55*a* lowed and the said cause brought into this court, it was heard and argued, by the respective advocates, on behalf of the United States and of the said appellants and claimants. And it appearing, from the proofs and papers in the said cause, that the said vessel having sailed as aforesaid, was captured as aforesaid, this court was of opinion that the said vessel was confiscable and liable to condemnation for a violation of the existing blockade of Savannah, and on the twelfth day of September, 1862, did pronounce and adjudge the said ship to have belonged, at the time of the capture aforesaid, to enemies of the United States, and to be as such, or otherwise, subject and liable to condemnation, and did condemn the same as good and lawful prize.

Witness Hon. Robert C. Grier, associate justice of the Supreme Court of the United States, and judge of circuit court aforesaid.

R. C. GRIER.

56*a* *Appeal.*

And thereupon, afterwards, to wit, August 26, A. D. 1863, James F. Johnston, esquire, proctor and advocate on behalf of the claimants, prays an appeal from the above decree of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, to the next Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next, and the same is allowed.

57*a* { Twenty-five-cent bond. } { Internal revenue stamp. }

Know all men by these presents, that we, William C. Richardson and George L. Oliver, of the city of Philadelphia, are held and firmly bound unto the United States of America, in the sum of five hundred dollars, to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and

severally, firmly by these presents, witness our hands and seals this first day of September, A. D. 1863.

Whereas in a cause pending in the circuit court of the United States of America for the eastern district of Pennsylvania, on appeal from the decree of the district court of the United States of America, in and for the eastern district of Pennsylvania, condemning as good and lawful prize the ship Admiral, her tackle, apparel, and furniture, a decree was rendered on the 12th day of September, 1862, condemning as good and lawful prize the said ship, her tackle, apparel, and furniture, and whereas Henry W. K. Coxhead, master of the said ship and claimant of the same, her tackle, apparel, and furniture, in the said cause, on behalf of Henry Fernie, James Fernie, and David Fernie, copartners under the firm of Fernie Brothers & Co., of Liverpool, England, owners of the said ship, &c., has, on behalf of the said owners, appealed from the said decree of the circuit court to the Supreme Court of the United States:

58 Now, therefore, the condition of this obligation is such, that if the said appellant shall prosecute to his appeal with effect, and pay all such costs and expenses as shall be awarded against him as such appellant, then this obligation shall be void, but otherwise, shall remain in full force and virtue.

W. C. RICHARDSON. [SEAL.]
GEO. L. OLIVER. [SEAL.]

Sealed and delivered in presence of—
BENJ'N PATTON.
W. GRIER HIBLER.

Which is endorsed as follows: No. 22, October sess., 1861, U. S. A. *vs.* The ship Admiral. Bond for cost on appeal.
Approved Sept. 1, 1863.

BENJ'N PATTON, *Clerk, C. C.*

Filed September 1, 1863.

59 United States of America to George A. Coffey, esquire, attorney of the United States for the eastern district of Pennsylvania:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to an appeal prayed for by claimants, and allowed in the circuit court of the United States for the eastern district of Pennsylvania, in a case of prize wherein the United States of America are complainants in said court, and Henry W. K. Coxhead is claimant on behalf of Henry Fernie, James Fernie, and David Fernie, copartners under the firm of Fernie Brothers, owners of the ship Admiral, to show cause, if any there be, why the decree rendered against the said claimants, and condemning the said vessel, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert C. Grier, a judge of the said circuit court, this third day of September, in the year of our Lord one thousand eight hundred and sixty-three.

R. C. GRIER.

{ Seal of circuit court, U. S. }

60 John H. Sloan, being duly sworn according to law, deposes and says that he served the within citation on George A. Coffey, esq., attorney of the United States for the eastern district of Pennsylvania, by exhibiting the same to him, and giving him a true and attested copy thereof, Sept. 7th, 1863.

J. H. SLOAN.

Sworn and subscribed before me this seventh day of Sept'r, A. D., 1863.

BENJ'N PATTON,
U. S. Comm'r.

{ Certif'te stamp 5 cents. }

61 UNITED STATES,
Eastern District of Pennsylvania, ss:

I certify the foregoing to be a true and faithful copy of the record and proceedings in the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, in a certain cause of prize therein lately depending, wherein the United States of America were libellants, against the ship Admiral, captured by the United States man-of-war Alabama, one of the Atlantic naval squadron.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-sixth day of September, A. D. 1863, and in the eighty-eighth year of the independence of the said United States.

[L. S.] BENJ'N PATTON,
Clerk Circuit Court, U. S.

Filed December 2, 1863.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 161.

IN PRIZE.

THE SHIP ADMIRAL, W. K. COXHEAD, Claimant, on behalf of Fernie, Bros. & Co., owners of said ship, Appellants, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 161.

IN PRIZE.

THE SHIP ADMIRAL, W. K. COXHEAD, Claimant, on behalf of Fernie, Bros. & Co., owners of said ship, Appellants, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The British ship Admiral, with a cargo of salt and coal, was captured on the afternoon of the 11th of December, 1861, by the Alabama, a naval vessel of the United States, in latitude north 31° 34′, and longitude 86° 10′ west, about thirty miles off Tybee island, while standing in for the port of Savannah, Georgia, and was proceeded against, together with her cargo, as prize of war, in the United States district court for the eastern district of Pennsylvania.

The vessel was claimed by the master on behalf of the firm of Fernie Brothers & Co., of Liverpool, England, and the cargo on behalf of the firm of W. & R. Wright, of St. John's, New Brunswick, in British America, all of which parties were alleged to be, and we believe are, British subjects.

The cargo was restored to the owners by decree of the district court, and the vessel condemned by decree of said court, pronounced on the 18th of March, 1862.

The claimants of the vessel, having prosecuted an appeal from said decree to the circuit court of the United States for said district, that court, on the 12th of September, 1862, affirmed said decree and condemned the ship.

The case of the vessel is now before this court upon an appeal from the decree of the circuit court.

THE FACTS APPEARING FROM THE PROOFS AND PAPERS.

The main and material facts of the case are uncontroverted, and may be briefly told.

The Admiral was chartered at Liverpool by the New Brunswick firm of W. & R. Wright, to proceed with a cargo of salt "off the port of Savannah, and, if the blockade is raised, then (to) proceed into port, and deliver the salt as her bill of lading, and if the blockade be not raised, then the ship to proceed to St. John's, N. B., and there deliver the same, with the usual despatch of the port," (Rec., p. 26.) The stipulated freight was thirty shillings per ton, if the cargo should be landed at *Savannah*, and fifteen shillings per ton if landed at St. John's.

The owners' *letter of instructions* to the master, enclosing the charter-party, directed him *to call off Savannah, and, if he should find the blockade still in force, to get the officer in command of the blockading ship to endorse on the ship's register that she had been warned off*, (Rec., p. 27.)

Under this charter-party and this letter of instructions, the Admiral sailed from Liverpool upon a direct course for Savannah, on the 12th of September, 1861, with a certificate of clearance on board, which expressed *St. John's, New Brunswick, as the sole port of her destination*, (Rec., p. 26.)

Her actual primary destination was, thus, at the port of her departure, in the most important public paper of the ship, the clearance, wholly suppressed, concealed, and falsified.

The capture was effected while she was standing directly in for Savannah, that port being then and there under efficient blockade.

Upon these facts, both the district and circuit courts were of opinion that the Admiral was confiscable for breach of the blockade of Savannah, and they accordingly pronounced for her condemnation.

The court will find in print, in the Record before it, the clear and cogent opinion delivered by Mr. Justice Grier in pronouncing judgment of condemnation in the circuit court, (Rec., p. 30.)

I.

The counsel for the United States are fairly entitled to presume that the learned advocates for the claimants do not intend to ask this court to again consider the question on which, in the first "prize cases," (2 Black, 678,) it pronounced so clear and emphatic a judgment, namely, the question whether the voyage of this vessel can be legally justified under the terms of the President's proclamation of blockade of the 19th of April, 1861.

The Admiral sailed from Liverpool with full knowledge of the blockade of Savannah as established by, and maintained under, that proclamation of the President, and we take the law of this proclamation now to be, that she was not, under it, entitled, at the mouth of the blockaded port, to receive a particular notice and a special warning endorsed on her register.

The hope of success in their case was mainly reposed by the advocates for the claimants in the court below upon their ability to induce the learned circuit judge to adopt that view of the meaning of the proclamation which he afterwards, in deciding the "prize cases," rejected, with the concurrence of a majority of his brethern upon this bench, in terms that, it would be thought, ought forever to set the question at rest. That learned judge, in deciding the point, said *below*, substantially as he afterwards said *here:* "A vessel which has full knowledge of the existence of a blockade before she enters on her voyage, has no right to claim a warning or endorsement when taken in the act of attempting to enter. It would be an absurd construction of the President's proclamation to require a notice to be given to those who already had knowledge. A notification is for those only who have sailed without a knowledge of the blockade, and get their first information of it from the blockading vessels," (Rec., p. 30.)

II.

The first proposition which we present is, that this vessel is liable to condemnation under the rule of the law of prize which prohibits a neutral vessel, having knowledge of the blockade

of a particular port, from sailing upon a destination to that port, with the intention of inquiring at the station of blockade relative to the continuance of the blockade, and that such vessel, taken upon a voyage, prosecuted with that intent, will be presumed in a court of prize to have intended to violate the said blockade.

This court has twice said that English prize law is our prize law, so far as it is adapted to our circumstances, and is not varied by our legislation, (8 Cranch, 284; 9 Cranch, 198.)

The first ground on which we ask the court to condemn this vessel is founded upon a principle that stands firmly rooted in the prize law of England. In one of his latest and best considered judgments, Lord Stowell deliberately, and without qualification, announced it to be a rule of British prize law, universal in its application, that although a neutral vessel, *with all her papers fair and square, suppressing, concealing, falsifying nothing*, sailing upon a doubtful or provisional destination *for a very distant blockaded port*, may proceed upon her voyage with the purpose of calling at *some port of the blockading nation, or at some neutral port* for information, and may be allowed the benefit of such a contingent destination, to be ascertained and rendered definite by information received at such intermediate port, yet that in no case, whether the port of departure be distant from or near to the blockaded port of destination, whether the actual intent, so far as it can be made to appear from the papers or facts of the voyage, be honest or fraudulent, will a vessel be permitted to sail to the mouth of a blockaded port, or to the very station of blockade, to inquire *there* whether a blockade, of which she had received previous formal notice, be still in existence or not; and that in the case of every vessel, sailing with such destination for the purpose of making such inquiry, *captured in the act of going towards the blockaded port*, a British court of prize will presume, "as a measure of necessary caution and of preventive legal policy," that it was the intention of the party who controlled her navigation to violate the blockade, and will subject her to the penalty affixed by the law of nations to that offence. The Spes and The Irene, (5 Rob., 77.)

Therefore, under the rule—not established, but, for the last time, deliberately reaffirmed by this case this ship, the Admiral, might with a clearance bearing an avowed destination to Savannah, have lawfully proceeded from Liverpool upon a fair conjecture that the blockade of Savannah had determined, and for the purpose of making fair inquiry at some port of the United States, such as New York or Baltimore, or at some British West India port, whether it had so determined or not, and she would not have been liable to capture on her voyage to such intermediate port of inquiry; but, with a falsified clearance on board, with no fair alternative or provisional destination, with a purpose to inquire nowhere but at the port of Savannah, her sailing towards that port under the rule of the case of the *Spes* and *The Irene*, was an *overt act* in breach of the blockade, which must seal her fate in this court.

The doctrine upon which Lord Stowell proceeded in the case of *The Spes* and *The Irene*, was fully affirmed by *The Lords Commissioners of Appeal*, in the cases of *The Little William* and *The Despatch*, reported in 1 Acton, 141, 163.

The vessels in these cases sailed from America with contingent destinations to European ports under blockade, and with instructions to inquire relative to the continuance of the blockades; but their acquittal by the high court of appeals was entirely based in the one case—*The Little William*—on the fact that the instruction to, and intention, of the vessel was to make the inquiry, not at the station of blockade of the Elbe, but of cruising vessels at the mouth of the Eyder, and in the other—*The Despatch*—on the fact that the vessel was, under instruction, to proceed in the first instance to Heligoland, where information could be obtained as to the continuance of the blockade of Bremen, and was pursuing her voyage to Heligoland at the time of capture. In the *James Cook*, (Edwards 204,) Sir William Scott, having in mind his own prior adjudication, definitely affirmed the doctrine just stated. He said, "The ship is captured in a place where the fact is conclusive against her, for it has been determined over and over again, that a ship is not at liberty to go up to the mouth of a blockaded port, even to make inquiry; that itself is a

consummation of the offence, and amounts to an actual breach of the blockade."

See also *The Arthur*, (ibid, 206.)

III.

We further ask the court to condemn this vessel, because the suppression, in the clearance taken at Liverpool, of the actual primary destination of the ship, in connexion with her near approach, when captured, to the blockaded port of Savannah, and the circumstances attending her attempt to enter that port, afford conclusive evidence of a premeditated and fraudulent intention to break the blockade.

The *res gestàe* of the voyage show that the actual primary destination of this vessel was Savannah—that Savannah is not to be regarded as in any sense her *fair alternative* destination. The blockaded port was her primary destination, not only in respect to *time*, but also in respect to the *objects* of the voyage. The chief and controlling purpose of the charterers was, that she should reach and enter Savannah, and there take on board a cargo of pitch pine for St. John's. (See letter of instructions, Rec., p. 27.) The very object of the voyage, therefore, was the obtaining of such a cargo. The real voyage, in which the hirers were interested was a future one, to begin after the vessel should enter Savannah. Their purpose was entirely frustratable by her failure to enter Savannah, and by her being compelled to go to St. John's. The cargo put on board at Liverpool was in the nature of ballast; and, further than that, the freight which the charterers agreed to pay, in case she entered Savannah, was twice as much as that stipulated to be paid in the event of the outward cargo being delivered at St. John's. (See charter-party, Rec., p. 27.) The intention, then, was that she should go to St. John's only in case it became utterly impossible for her, by stress of the blockade, to enter Savannah.

And yet she left Liverpool as for a voyage direct to *St. John's*, with that port alone expressed on her clearance. Lord Stowell said, in a case presenting very similar features, that the destination of the vessel to the non-prohibited port was

not, under such circumstances as these, to be considered an alternative destination. (The Juffrouw Anna, 1 Rob., 127.) "*To make a voyage fairly alternative*," he said, "it should appear on the papers to be so." "*Savannah*," should then have appeared on her clearance, if she would have put herself at Liverpool in the true position to claim any benefit from the *alternative* character of her southern destination. The clearance, as Mr. Justice Grier has said, is the one appropriate public document of the ship in which to disclose and exhibit her intention. The suppression of the true destination, or any part of it in *that* paper, renders the document positively and determinately *false*. The municipal customs regulations of all commercial countries require vessels sailing from their ports to disclose their real destinations, and to clear for the place or places to which they may be bound, and to no others. In time of war, belligerents have the right to take advantage of, and to benefit by, those regulations. Information communicated by American consular or diplomatic agents abroad to their government, that vessels were not clearing at the foreign ports for certain blockaded ports, may materially affect the executive measures relative to the blockade. *And if frauds are perpetrated at foreign ports by neutral masters or owners, which are calculated to mislead our agents abroad, they have no reason to complain if their property involved in such frauds is visited with condemnation.*

The clearance, furthermore, is the document which a belligerent cruiser first inspects, in exercising the right of visitation and search, when there is any question as to the destination of a vessel on the high seas, and the concealment there of the primary destination, of a ship is a sufficient reason in every case for sending her in for examination. But what is the legal effect of such suppression and consequent falsification of the actual destination, where it appears, as in this case, that the vessel was primarily bound to, and directly sailing for, a *blockaded* port? The rule of the prize law is, that such falsification of the actual primary destination becomes in that case a sufficient cause of condemnation; the court has the right, says Lord Stowell "*to presume everything* against a case in which so evident a suppression of a material truth has

appeared." (The Rosalie and Betty, 2 Rob., 352.) Sir William Scott never permitted further proof in any case where such a suppression or concealment of destination had occurred, and, under the operation of that rule, condemnation, of course, invariably ensued in every such case. (The Carolina, 3 Rob., 78; The Nancy, 3 Rob., 125; The Jeffrouw Anna, 1 Rob., 126; The Mars, 6 Rob., 36.)

A. *The Arthur*, (Edwards, 204,) is a case directly in point, on the legal effect of *dissembling* in "the open papers" of a ship the primary port of destination. This vessel was bound from Providence *ostensibly* to Heppens. The *instructions* were, "Should you hear on your passage that the ports of Holland are open to your trade, you may go to the Texel; otherwise, instead of going to the port of clearance, you are to proceed to the Ems."

Now, said Sir Wm. Scott: "*This being the case, it should by all means have been expressed in the open papers that the intention was, that the ship should proceed to the Texel or to the Ems, if permitted to do so. These were primarily her ports of destination, and ought not to be dissembled, otherwise the belligerent may be deceived and his rights eluded.*"

In the case of *The Betsy*, (1 Rob., 324,) where the voyage was an alternative one from *America* either to Amsterdam (then blockaded) or to Hamburg. Lord Stowell acquitted exclusively on the ground that *all* the papers of the vessel bore an *avowed destination* to Amsterdam, which, he held, destroyed the suspicion of fraud. The prize code of every maritime nation pronounces the simulation of papers to be an efficient cause of condemnation. This was the ground of confiscation in the Danish prize cases referred to in the insurance decisions. (Oswell *v.* Vigne, Bell *v.* Bromfield, reported in 15 East, pp. 70, 364,) and in the Russian decision, mentioned in the same book, (p. 47) in the report of the case of Horneyer *v.* Leishington.

The court will consider, in connexion with the fact of the falsification of her destination at Liverpool, the circumstances attending her capture. She was caught in the very act of consummating the fraud which was begun at Liverpool. Her

conduct shows conclusively what was the *object* of the original fraud. She had called nowhere on the voyage to inquire whether the blockade continued. She did not bring to on coming near the interdicted coast, and await the approach of a blockading vessel. But, utterly regardless of the right of this belligerent nation, and utterly forgetful of her duty as a neutral vessel, she pressed right on toward Savannah. What particle of evidence is here found to rebut the vehement suspicion of fraud which attached to her false clearance? What single fact is shown which disproves the fraudulent intention which, we have shown, must be presumed from the character of her clearance? When we look for such evidence—and the *onus probandi*, let it be remembered, is here with the claimants—we find that every circumstance attending her approach to the blockaded coast throws a darker and still darker shade upon the whole transaction. If ever premeditated intention to evade a blockade in any case was made out beyond doubt or question, it is in this case. The very subtlety of the fraud, gives it a darker character. Setting out from Liverpool, she provides herself with a clearance to a port which she never intended to reach, unless compelled to go there by absolute necessity. That document was to serve her in the event of search on the mid-ocean by a United States cruiser. Having met with no interruption on the voyage, she comes in sight of the southern coast, and instead of seeking the blockading vessel, she pursues an uninterrupted course for Savannah. When she comes within a few miles of the port, the blockader overhauls her. What does she produce in her defence—what is exhibited as proof of an honest intent to disprove that she *meant* to do what she was then and there *endeavoring* to do? Simply, the owners' letter to the master, instructing him not to violate the blockade. Who cannot see that, whether her intentions were good or bad, she would in any case have been provided with just such a paper as this? In the one hand Captain Coxhead carries the clearance to St. John's for a cruiser on mid-ocean; in the other, he carries this letter for a blockader off the coast of Georgia. But the answer of the man-of-war to the master's assertion of his innocent intentions

is a plain and conclusive one: "You have already violated this blockade; you have reached this interdicted spot through fraud; your *actions* must now speak, not the *letter*, either for or against your vessel."

We ask this court to say, with his honor Mr. Justice Grier, "If so transparent a contrivance (as this letter of instructions) could be received as evidence of the want of any 'premeditated intention to break the blockade,' the important right of blockade would be but a *brutum fulmen* in the hands of a belligerent."

It is respectfully submitted, for the reasons presented, that this vessel was subject to condemnation for a violation of the blockade of Savannah, and that the decree of the circuit court should accordingly be affirmed.

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U. S. Supreme Court.

WILLIAM K. COXHEAD, Claimant of Ship Admiral,
Appellant,
against
THE UNITED STATES,
Appellees.

Points for Appellant.

CASE.

On the ninth day of September, 1861, the ship Admiral, owned by British subjects residing in Great Britain, sailed under charter for St. John. Her destination was Savannah if the blockade did not exist and St. John if it did. She proceeded to within thirty miles of Tybee Light without ascertaining whether there was or not a blockade, and then was boarded by the Alabama, taken to Port Royal, and seized as prize. The cargo was discharged as not prize, and the vessel held. The seizure was on the 11th of December, 1861. She made no attempt to escape.

POINTS.

FIRST.—All the facts as stated fully appear by the evidence; there is no doubt thrown over it, and the best of faith is shown in all the transactions by both the owners and captain; the papers on board fully and frankly set out the voyage and intent of the parties, no papers or documents could be more full or perfect to sustain the captain's statements.

The captain's conduct, when captured, is of the most frank kind; not the slightest effort at concealment, all the papers showing all about the vessel handed over; no attempt to falsify, and no suppression of papers.

SECOND.—This case must be tried, and the conduct of the parties judged, by the status of all parties in September, 1861, to see what the intent was. In doing this, it is presumed that all the parties knew the law, and that the foreigner supposed that the United States were, by their diplomacy and their courts, going to administer the law as all parties then knew it to have been laid down here.

Now, what was the situation then?

1. All these parties had the right to suppose that the law, as laid down by the Supreme Court, would, in this war, be laid down; that law had been laid down in 6 Cranch, 29.

2. It had again and again been declared that, within a short time, at farthest, that blockade would be over, and parties had the right to rely on those statements.

3. Port Royal was in our possession (although these parties did not know it) and that shows that it was not a very long stretch in those parties on the other side of the Atlantic, to suppose such an event should have happened to Savannah.

4. The character of the blockade as notified, permitted it.

THIRD.—In deciding the question in these cases, intent is the true rule. Any person, if he really does not intend to violate the blockade, has the right to call off or near it. Our whole policy in all European wars, and in all others but this, has been and was well understood to be, to assert the fullest right of trade and commerce.

It would be falsifying our whole history to set up another rule for foreigners in our own wars, than that we claimed for ourselves when other nations occupied our position.

In a nation like our own, young in its policy and its years, it adds nothing to its greatness or the respect which others have for its judiciary, to hold one principle for its neighbor and one for ourself; the same principle which governs individuals governs nations and courts, and one, like the other, loses or gains respect by its adherence to principle; and our ultimate greatness will depend more on the respect which those surrounding nations have for us and our judicial fame than our internal wealth or property. No nation has long survived the lack of principle, and when the day comes that only our interest or revenge governs in courts of justice and in the state, there will be little left to be hoped for or sustained. As to what is requisite to forfeit,

See Upton, 190, first edition.

The whole reasoning in these cases (where no actual entry or exit is shown) is on the intent and while in the absence of express proof, intent may be presumed, the whole reasoning shows that where the true intent is shown none other can be presumed.

Moderios *vs.* Hill, 8 Bing. R. 231.
Flanders, Mar. Law (1st edit.) s. 225, 226.
Betsey, 1 C. Rob. 334.
Despatch, 1 Acton, 163; 6 Cranch, 29.
Adelaide, 3 C. Rob. 282.

FOURTH.—In this case the whole enterprise, whatever it was, was for the benefit of the cargo; in fact, the whole undertaking was a charter of the ship for the benefit of, and to dispose of this cargo and get another for the same owner, and we submit that no case can be found except this where *the cargo, the whole object and intent of the voyage, is found to be honest or not culpable, that the ship (only the carrier) should be held.* In this case both ship and crew (including master), are but the merest servants of the cargo (all of it belonging to one adventure and having but only one ultimate object) and it is a harsh rule to discharge that cargo and hold the ship. The same presumption prevails against the cargo as the ship.

FIFTH.—In this case the notice to be given was one that might easily mislead the parties. And if the court find that really Mr. Seward's repeated assurances of an early opening of Southern ports, and this notice to be given, led

the parties, or for any cause they in good faith intended to make the inquiries and not violate the blockade if it existed, then no condemnation should have been had.

1. In this case the story told is a reasonable one, and one, if a simulated one had been necessary and intended, that never would have been resorted to.

2. The trade sought to be exercised by the vessel is an accustomed one, that is, of the carrying of their products by their subjects as before the war. Upton, 1st ed., 174, 175.

3. The knowledge of the existence of the blockade must be known to the parties. Upton, 190. (Not only a paper blockade, but an actual one, should be known.)

The judgment should be reversed, with costs and damages.

CHARLES DONOHUE,
Advocate.